



Concession Document (Easement)

THIS EASEMENT is made this day of

PARTIES:

1. **Minister of Conservation**, (the Grantor)
2. ~&~HolderTableLegalName^&^ (the Concessionaire)

BACKGROUND

- A.** The Department of Conservation (“Department”) *Te Papa Atawhai* is responsible for managing and promoting conservation of the natural and historic heritage of New Zealand on behalf of, and for the benefit of, present and future New Zealanders.
- B.** The Department is under the control of the Grantor.
- C.** The carrying out of these functions may result in the Grantor granting concessions to carry out activities on public conservation land.
- D.** The Grantor administers public conservation lands described in Schedule 1 as the Easement Land.
- E.** The Conservation legislation applying to the Easement Land authorises the Grantor to grant a concession over the Easement Land.
- F.** The Concessionaire wishes to carry out the Concession Activity on the Easement Land subject to the terms and conditions of this Concession.
- G.** The Concessionaire acknowledges that the Easement Land may be the subject of Treaty of Waitangi claims
- H.** The parties wish to record the terms and conditions of this Concession and its Schedules.

OPERATIVE PARTS

- I.** In exercise of the Grantor's powers under the Conservation legislation the Grantor **GRANTS** to the Concessionaire an **EASEMENT** to carry out the Concession Activity on the Easement Land subject to the terms and conditions contained in this Concession and its Schedules

SIGNED on behalf of the Minister of Conservation by
[insert name and title of delegate]
 acting under delegated authority in the presence of:
 Witness Signature: _____
 Witness Name: _____

*(Select **one** only of the following execution clauses and delete the other four)*
 SIGNED by *[insert name of Concessionaire if an individual]*
 in the presence of:
 Witness Signature: _____

Witness Occupation: _____

Witness Address: _____

A copy of the Instrument of Delegation may be inspected at the Department of Conservation at 18-22 Manners Street, Wellington.

Witness Name: _____

Witness Occupation: _____

Witness Address: _____

Or

SIGNED by *[insert name of Company]* Limited by:

Director
name

Director
name

Or

NOTE: the following execution clause may only be used if you have checked the Company records at the Company's office and have confirmed that the Company has only one Director

SIGNED by *[insert name of Company]* Limited by its Director *[insert name]:*

name
in the presence of:

Witness Signature: _____

Witness Name: _____

Witness Occupation: _____

Witness Address: _____

Or

SIGNED on behalf of *[insert name of partnership]* by *[insert name of authorised signatory]* in the presence of:

Witness Signature: _____

Witness Name: _____

Witness Occupation: _____

Witness Address: _____

Or

	<p>The seal of <i>[insert name of Incorporated Society]</i> was affixed in the presence of :</p> <hr/> <p>Authorised Signatory</p> <hr/> <p>Authorised Signatory</p>
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SCHEDULE 1

1.	Easement Land (Servient land - the land where the easement activity occurs) (Schedule 4)	As marked on the attached plan or map in Schedule 4 being: Physical Description/Common Name: Land Status: Area: Legal Description: Map Reference:
2.	Land (Dominant land - the land that benefits from the easement) <i>(If none then select "in gross")</i> (Schedule 4)	Is the easement in gross? Yes / No If no then complete the following: As marked on the attached plan or map in Schedule 4 being the land in certificate of title:
3.	Concession Activity (clause 2)	<i>Select one or more of the following:</i> (a) a right to convey water: (b) a right to drain water: (c) a right to drain sewage: (d) a right of way: (e) a right to convey electricity: (f) a right to convey telecommunications and computer media: (g) a right to convey gas.
4.	Term (clause 3)	_____ years _____ months commencing on _____
5.	Final Expiry Date (clause 3)	
6.	Concession Fee (clause 4)	\$xxx plus GST
7.	Concession Fee Payment Dates (clause 4)	
8.	Penalty Interest Rate (clause 4)	<i>[insert an appropriate rate e.g. Double the Grantor's bank's highest 90 day bank bill buy rate]</i>
9.	Concession Fee Review Date(s)	

	(clause 5)	
10.	Insurance (To be obtained by Concessionaire) (clause 11)	A. <u>Types and amounts:</u> (i) Public Liability Insurance for: (a) general indemnity for an amount no less than \$ _____; and (b) Forest and Rural Fires Act extension for an amount no less than \$ _____; and <i>(If any of the policies are not required, delete the words “for an amount not less than \$ _____” and insert the words “is not required”)</i> B. <u>Other Policies and amounts</u> [Insert as appropriate]: Insurance amounts subject to review (clause 11)
11.	Addresses for Notices (clause 20)	The Grantor’s address is: _____ _____ _____ Phone: Fax: Email: NB: Use street address only
		The Concessionaire’s address in New Zealand is: ~&~HolderTableStreetAddress^&^ Phone: ~&~HolderTableContactWorkPhone^&^ Fax: ~&~HolderTableContactFax^&^ Email: NB: Use street address only
12.	Registration of Easement (Schedule 5)	Is the easement to be registered with LINZ? Yes/ No If yes, then the following applies: When the Concessionaire wishes the Easement to be registered then the Concessionaire must at its expense prepare an Easement Instrument in the form attached as Schedule 5, arrange for any necessary survey and register the document. The Grantor, if satisfied the Easement Instrument implements this easement must sign the document.
13.	Special Conditions (clause 24)	See Schedule 3

Note: The clause references are to the Grantor’s Standard Terms and Conditions set out in Schedule 2.

Note: Please initial each page of Schedule 1

SCHEDULE 2

STANDARD CONDITIONS

1. Interpretation

- 1.1 The Concessionaire is responsible for the acts and omissions of its employees, contractors, agents, clients and invitees (excluding other members of the public accessing the Easement Land). The Concessionaire is liable under this Concession for any breach of the terms of the Concession by its employees, contractors, agents, clients and invitees (excluding other members of the public accessing the Easement Land), as if the breach had been committed by the Concessionaire.
- 1.2 Where this Concession requires the Grantor to exercise a discretion or give any approval or provides for any other actions by the Grantor, then the Grantor must act reasonably and within a reasonable time. When a consent is required under this Concession such consent must not be unreasonably withheld.

2. What is being authorised?

- 2.1 The Concessionaire is only allowed to use the Easement Land for the Concession Activity.
- 2.2 The Concessionaire must not commence the Concession Activity until the Concessionaire has signed the Concession Document and returned one copy of this Document to the Grantor, as if it were a notice to be given under this Concession.

3. How long is the Concession for - the Term?

- 3.1 This Concession commences on the date specified in Item 4 of Schedule 1 and ends on the Final Expiry Date specified in Item 5 of Schedule 1.

4. What are the fees and when are they to be paid?

- 4.1 The Concessionaire must pay to the Grantor in the manner directed by the Grantor the Concession Fee plus GST on the Concession Fee Payment Dates specified in Items 6, and 7 of Schedule 1.
- 4.2 If the Concessionaire fails to make payment within 14 days of the Concession Fee Payment Date then the Concessionaire is to pay interest on the unpaid Concession Fee from the Concession Fee Payment Date until the date of payment at the Penalty Interest Rate specified in Item 8 of Schedule 1.

5. When can the fee be reviewed?

- 5.1 The Grantor is to review the Concession Fee on the Concession Fee Review Dates in the following manner:

- (a) The Grantor must commence the review not earlier than 3 months before a Concession Fee Review Date and no later than 9 months following the Concession Fee Review Date by giving notice to the Concessionaire.
- (b) Subject to clause 5.1(e) the notice must specify the Concession Fee which the Grantor considers to be the market value for the Concession Activity as at the Concession Fee Review Date having regard to the matters specified in section 17Y(2) of the Conservation Act 1987.
- (c) If, within 28 days of receipt of the Grantor's notice, the Concessionaire gives notice to the Grantor that the Concessionaire disputes the proposed new Concession Fee the new Concession Fee is to be determined in accordance with clause 5.2(a) or (b).
- (d) If the Concessionaire does not give notice to the Grantor under clause 5.1(c) the Concessionaire is to be deemed to have accepted the Concession Fee specified in the Grantor's notice.
- (e) Notwithstanding clause 5.1(b) the new Concession Fee so determined or accepted must not be less than the Concession Fee payable during the year preceding the particular Concession Fee Review Date and is to be the Concession Fee payable by the Concessionaire from the Concession Fee Review Date.
- (f) Until determination of the new Concession Fee, the Concession Fee payable by the Concessionaire from the Concession Fee Review Date is to be the Concession Fee specified in the Grantor's notice. On determination of the new Concession Fee an adjustment is to be made and paid, either by the Grantor or by the Concessionaire, whichever is applicable.

5.2 Immediately the Concessionaire gives notice to the Grantor under clause 5.1(c) the parties are to endeavour to agree on a new Concession Fee. If the parties are unable to reach agreement within 28 days the new Concession Fee is to be determined either:

- (a) By one party giving notice to the other requiring the new Concession Fee to be determined by the Disputes clause (clause 19) or, if the parties agree,
- (b) by registered valuers acting as experts and not as arbitrators as follows:
 - (i) Each party must appoint a valuer and give notice of the appointment to the other party within 14 days of the parties agreeing to determine the new Concession Fee by this means.
 - (ii) If the party receiving a notice does not appoint a valuer within the 14 day period the valuer appointed by the other party is to determine the new Concession Fee and that valuer's determination is to be binding on both parties.
 - (iii) Before commencing their determination the respective valuers must appoint an umpire who need not be a registered valuer.
 - (iv) The valuers are to determine the new Concession Fee which they consider to be the market value for the Concession Activity as at the Concession Fee Review Date having regard

to the matters specified in section 17Y (2) of the Conservation Act 1987 but in no case is the new Concession Fee to be less than the Concession Fee payable during the year preceding the particular Concession Fee Review Date. If they fail to agree the Concession Fee is to be determined by the umpire.

- (v) In determining the Concession Fee the valuers or umpire are to disregard the annual cost to the Concessionaire to maintain or provide access to the Easement Land.
 - (vi) Each party is to be given the opportunity to make written or oral representations or submissions to the valuers or the umpire subject to such reasonable time and other limits as the valuers or the umpire may prescribe.
 - (vii) The valuers or the umpire must have regard to any such representations but are not bound by them.
- (c) The valuers or umpire must give written notice to the parties once they have determined the new Concession Fee. The notice is to be binding on the parties and is to provide how the costs of the determination are to be borne.
- (d) (i) If a Concession Fee Review Date is postponed because of a moratorium imposed by law the Concession Fee Review is to take place at the date the moratorium is lifted or so soon afterwards as is practicable; and
- (ii) the Concession Fee Review is to establish the market value for the Concession Activity as at that date instead of the date fixed under clause 5.1 having regard to the matters specified in section 17Y(2) of the Conservation Act 1987 but in no case is the new Concession Fee to be less than the Concession Fee payable during the year preceding the particular Concession Fee Review Date; and
- (iii) each subsequent Concession Fee Review is to take place in accordance with the procedure fixed in clause 5.1.

6. Are there any other charges?

- 6.1 The Concessionaire must pay all levies rates and other charges, including utility charges payable in respect of the Easement Land or for the services provided to the Easement Land which relate to the Concessionaire's use of the Easement Land or the carrying on of the Concession Activity.
- 6.2 The Grantor is not liable for any cost incurred in re-establishing the supply of any utilities in the event of any of them becoming unavailable for any reason.
- 6.3 Where the Grantor has paid such levies, rates or other charges the Concessionaire must on receipt of an invoice from the Grantor pay such sum to the Grantor within 14 days of receiving the invoice. If payment is not made within the 14 days then the Concessionaire is to pay interest on the unpaid sum from the date payment was due until the date of payment at the Penalty Interest Rate specified in Item 8 of Schedule 1.

7. When can the Concession be assigned?

- 7.1 If in Item 2 of Schedule 1 the easement is expressed as being in gross the Concessionaire must not transfer, sub licence, assign, mortgage or otherwise dispose of the Concessionaire's interest under this Concession or any part of it (which includes the Concessionaire entering into a contract or any other arrangement whatsoever whereby the Concession Activity would be carried out by a person (called the assignee) other than the Concessionaire) without the prior written consent of the Grantor.
- 7.2 The Grantor may in the Grantor's discretion decline any application for consent under clause 7.1.
- 7.3 Sections 17P, 17S, 17T, 17U, 17W, 17X, 17ZB and 17ZC of the Conservation Act 1987 apply to applications for consent under this clause unless the Grantor, in the Grantor's discretion, decides otherwise.
- 7.4 If the Grantor gives consent under this clause then the Concessionaire remains liable to observe and perform the terms and conditions of this Concession throughout the Term and is to procure from the Assignee a covenant to be bound by the terms and conditions of this Concession.
- 7.5 The Concessionaire must pay the costs reasonably incurred by the Grantor incidental to any application for consent, whether or not such consent is granted.
- 7.6 If the Concessionaire is not a publicly listed company any change in the shareholding of the Concessionaire altering the effective control of the Concessionaire is to be deemed to be an assignment and requires the consent of the Grantor.

8. What are the obligations to protect the environment?

- 8.1 The Concessionaire must not cut down or damage any vegetation; or damage any natural feature or historic resource on the Easement Land; or light any fire on the Easement Land without the prior consent of the Grantor.
- 8.2 The Concessionaire must at its cost keep the easement facility (as defined in the Land Transfer Regulations 2002) now or hereafter upon the Easement Land, in good order, condition and repair and must keep the Easement Land in a clean and tidy condition and must not store hazardous materials on the Easement Land nor store other materials on the Easement Land where they may obstruct the public or create a nuisance.

9. When can structures be erected?

- 9.1 The Concessionaire must not erect, nor place any structures on, under or over the Easement Land without the prior consent of the Grantor.

10. What if the Concessionaire wishes to surrender the Concession?

- 10.1 If the Concessionaire wishes to surrender this Concession during the currency of the Term, then the Grantor may accept that surrender on such conditions as the Grantor considers appropriate.

11. What are the liabilities and who insures?

- 11.1 The Concessionaire agrees to use the Easement Land at the Concessionaire's own risk and releases to the full extent permitted by law the Grantor and the Grantor's employees and agents from all claims and demands of any kind and from all liability which may arise in respect of any accident, damage or injury occurring to any person or property in or about the Easement Land.
- 11.2 The Concessionaire must indemnify the Grantor against all claims, actions, losses and expenses of any nature which the Grantor may suffer or incur or for which the Grantor may become liable arising from the Concessionaire's performance of the Concession Activity.
- 11.3 This indemnity is to continue after the expiry or termination of this Concession in respect of any acts or omissions occurring or arising before its expiry or termination.
- 11.4 The Concessionaire has no responsibility or liability for costs, loss, or damage of whatsoever nature arising from any act or omission or lack of performance or any negligent or fraudulent act or omission by the Grantor, or any contractor or supplier to the Grantor, or any employee or agent of the Grantor.
- 11.5 Despite anything else in clause 11 the Concessionaire is not liable for any indirect or consequential damage or loss howsoever caused.
- 11.6 The Grantor is not liable and does not accept any responsibility for damage to or interference with the Easement Land, the Concession Activity, or to any structures, equipment or facilities on the Easement Land or any other indirect or consequential damage or loss due to any natural disaster, vandalism, sabotage, fire, or exposure to the elements except where, subject to clause 11.7, such damage or interference is caused by any wilful act or omission of the Grantor, the Grantor's employees, agents or contractors.
- 11.7 Where the Grantor is found to be liable in accordance with clause 11.6, the total extent of the Grantor's liability is limited to \$1,000,000 in respect of the Concessionaire's structures, equipment and facilities.
- 11.8 Despite anything else in clause 11 the Grantor is not liable for any indirect or consequential damage or loss howsoever caused.
- 11.9 Without prejudice to or in any way limiting its liability under this clause 11 the Concessionaire at the Concessionaire's expense must take out and keep current policies for insurance and for the amounts not less than the sums specified in Item 10 of Schedule 1 with a substantial and reputable insurer.
- 11.10 After every three year period of the Term the Grantor may, on giving 10 working day's notice to the Concessionaire, alter the amounts of insurance required under clause 11.9 On receiving such notice the Concessionaire must within 10 working days take out and keep current policies for insurance and for the amounts not less than the sums specified in that notice.
- 11.11 The Concessionaire must provide to the Grantor within 5 working days of the Grantor so requesting:
 - (a) details of any insurance policies required to be obtained under this Concession, including any renewal policies if such renewal occurs during the Term; and/ or;

- (b) a copy of the current certificate of such policies.

12. What about Health and Safety?

12.1 The Concessionaire must exercise the rights granted by this Concession in a safe and reliable manner and must comply with the Health and Safety in Employment Act 1992 and its regulations and all other provisions or requirements of any competent authority relating to the exercise of this Concession. The Concessionaire must comply with any safety directions of the Grantor.

13. What are the compliance obligations of the Concessionaire?

13.1 The Concessionaire must comply where relevant:

- (a) with the provisions of any conservation management strategy or conservation management plan under the Conservation Act 1987 or Part IIA of the Reserves Act 1977, or any general policy statement made under the Conservation Act 1987, Reserves Act 1977, National Parks Act 1980, or Wildlife Act 1953, or management plan under section 45 of the National Parks Act 1980, whichever is appropriate to the Easement Land, together with any amendment or review of any policy, strategy or plan whether approved before, on, or after the date on which this Concession takes effect; and
- (b) with the Conservation Act 1987, the Reserves Act 1977, the National Parks Act 1980, Wildlife Act 1953 and any other statute, ordinance, regulation, bylaw, or other enactment (collectively the “Legislation”) affecting or relating to the Easement Land or affecting or relating to the Concession Activity, including any regulations made under the Conservation Act 1987 and Wildlife Act 1953 or bylaws made under the Reserves Act 1977 or the National Parks Act 1980; and
- (c) with all notices and requisitions of any competent authority affecting or relating to the Easement Land or affecting or relating to the conduct of the Concession Activity; and
- (d) with all Department signs and notices placed on or affecting the Easement Land

13.2 The Concessionaire must comply with this Concession.

13.3 A breach or contravention by the Concessionaire of a relevant conservation management strategy, conservation management plan, management plan or any statement of general policy referred to in clause 13.1.(a) is deemed to be a breach of this Concession.

13.4 A breach or contravention by the Concessionaire of any Legislation affecting or relating to the Easement Land or affecting or relating to the Concession Activity is deemed to be a breach of this Concession.

14. When can the Concession be terminated?

14.1 If the Concessionaire breaches any of the conditions of this Concession the Grantor may terminate this Concession at any time in respect of the whole or any part of the Easement Land. Before so terminating the Grantor must give the Concessionaire either:

- (a) one calendar month's notice in writing; or
- (b) such other time period which in the sole opinion of the Grantor appears reasonable and necessary;

of the Grantor's intention so to terminate this Concession. If this Concession is terminated then the Grantor, at the Grantor's sole discretion, may adjust the Concession Fee payable or refund any Concession Fee paid in advance.

- 14.2 The Grantor may choose to remedy at any time any default by the Concessionaire under this Concession. Where that occurs, the Concessionaire must pay forthwith on demand all reasonable costs incurred by the Grantor in remedying such default. Before electing to so remedy in accordance with this clause the Grantor must, if practicable, first give the Concessionaire notice of the default and a reasonable opportunity to remedy the default.

15. What happens on termination or expiry of the Concession?

- 15.1 On expiry or termination of this Concession, either as to all or part of the Easement Land, the Concessionaire is not entitled to compensation for any structures or other improvements placed or carried out by the Concessionaire on the Easement Land.

- 15.2 The Concessionaire may, with the Grantor's written consent, remove any specified structures and other improvements on the Easement Land. Removal under this clause must occur within the time specified by the Grantor and the Concessionaire is to make good any damage and leave the Easement Land and other public conservation land affected by the removal in a clean and tidy condition.

- 15.3 The Concessionaire must, if the Grantor gives written notice, remove any specified structures and other improvements on the Easement Land. Removal under this clause must occur within the time specified by the Grantor and the Concessionaire is to make good any damage and leave the Easement Land and other public conservation land affected by the removal in a clean and tidy condition and replant the Easement Land with indigenous vegetation of a similar abundance and diversity as at the commencement of the Term. If before the expiry of the Term the Concessionaire makes an application for a further concession in respect of the same Concession Activity on the Easement Land then the Grantor can not require such removal and reinstatement until such time as that concession application has been determined. If a new concession is granted then removal and reinstatement can not be required until the expiry or termination of the new concession.

16. When is the Grantor's consent required?

- 16.1 Where the Grantor's consent or approval is expressly required under this Concession then the Concessionaire must seek that approval or consent for each separate time it is required even though the Grantor may have given approval or consent for a like purpose on a prior occasion. Any such consent or approval may be made on such conditions as the Grantor considers appropriate.

17. Are there limitations on public access and closure?

17.1 The Concessionaire acknowledges that the Easement Land is open to the public for access and that the Grantor may close public access during periods of high fire hazard or for reasons of public safety or emergency.

18. What about other concessions?

18.1 Nothing expressed or implied in this Concession is to be construed as preventing the Grantor from granting other concessions, whether similar or not, to other persons provided that the Grantor must not grant another concession that would derogate in any material way from the Concessionaire's ability to carry out the Concession Activity.

19. How will disputes be resolved?

19.1 If a dispute arises between the parties in connection with this Concession the parties must, without prejudice to any other rights or entitlements they may have, attempt to resolve the dispute by agreement using informal dispute resolution techniques such as negotiation, mediation, independent expert appraisal or any other alternative dispute resolution technique. The rules governing any such technique adopted are to be agreed between the parties.

19.2 If the dispute cannot be resolved by agreement within 14 days of written notice by one party to the other (or such further period as the parties may agree to in writing) either party may refer the dispute to the Disputes Tribunal, where relevant, or to arbitration, which arbitration is to be carried out in accordance with the provisions of the Arbitration Act 1996.

19.3 If the parties do not agree on an arbitrator within 10 working days of a party giving written notice of the requirement to appoint an arbitrator the President of the New Zealand Law Society is to appoint the arbitrator. In either case the arbitrator must not be a person who has participated in an informal dispute resolution procedure in respect of the dispute.

19.4 The arbitrator must include in the arbitration award reasons for the determination.

19.5 Despite the existence of a dispute, each party must continue to perform its obligations under this Concession.

20. How are notices sent and when are they received?

20.1 Any notice to be given under this Concession is to be in writing and made by personal delivery, fax, by pre paid post or email to the receiving party at the address, fax number or email address specified in Item 11 of Schedule 1. Any such notice is to be deemed to have been received:

- (a) in the case of personal delivery, on the date of delivery;
- (b) in the case of fax, on the date of dispatch;
- (c) in the case of post, on the 3rd working day after posting;
- (d) in the case of email, on the date receipt of the email is acknowledged by the addressee by return email or otherwise in writing.

20.2 If either party's details specified in Item 11 of Schedule 1 change then the

party whose details change must within 5 working days of such change provide the other party with the changed details.

21. What about the payment of costs?

21.1 The Concessionaire must pay the Grantor's legal costs and expenses of and incidental to preparing and signing this Concession or any extension or variation of it.

21.2 The Concessionaire must pay in full immediately and on demand all costs and fees (including solicitor's costs and fees of debt collecting agencies engaged by the Grantor) arising out of and associated with steps taken by the Grantor to enforce or attempt to enforce the Grantor's rights and powers under this Concession including the right to recover outstanding money owed to the Grantor.

22. What about the powers implied by statute?

22.1 The rights and powers implied in the relevant easements by the 5th Schedule to the Property Law Act 2007 and the Fourth Schedule to the Land Transfer Regulations 2002 **DO NOT APPLY** to this Easement. The rights and powers relating to this Easement are set out in the Special Conditions contained in Schedule 3.

23. What about Co-Siting?

23.1 In this clause "Co-Site" means the use of the Concessionaire's structures or facilities on the Easement Land by a third party for an activity; and "Co-Sitee" and "Co-Siting" have corresponding meanings.

23.2 The Concessionaire must not allow Co-Siting on the Easement Land without the prior written consent of the Grantor.

23.3 The Grantor's consent must not be unreasonably withheld but is at the Grantor's sole discretion and subject to such reasonable terms and conditions as the Grantor thinks fit including a requirement that the Co-Sitee be liable for direct payment to the Grantor of a concession fee and any environmental premium assessed in respect of the Co-Sitee's activity on the Easement Land.

23.4 In addition, the Grantor must withhold consent if:

- (a) the Co-Siting would result in a substantial change to the Concession Activity on the Easement Land; or
- (b) the Grantor considers the change to be detrimental to the environment of the Easement Land.

23.5 Subject to clause 23.4 the Concessionaire must, if required by the Grantor, allow Co- Siting on the Easement Land.

23.6 Where the Concessionaire maintains that Co-Siting by a third party on the Easement Land would:

- (a) detrimentally interfere physically or technically with the use by the Concessionaire of the Easement Land; or

- (b) materially prejudice any resource consents obtained by the Concessionaire or cause more onerous conditions to be imposed on it by the relevant authority; or
- (c) obstruct or impair the Concessionaire's ability effectively to operate from the Easement Land; or
- (d) interfere with or prevent future forecast works of the Concessionaire, the Grantor, must, as a pre-condition to consideration of an application to grant a concession to a third party, require that third party to obtain, at its own cost, a report prepared by an independent consultant acceptable to the Grantor confirming or rejecting the presence of the matters specified in this clause 23.6. The Grantor must not grant a concession to a third party where the report confirms that the proposed concession would give rise to one or more of the matters specified in this clause 23.6.

23.7 If the independent consultant report rejects the Concessionaire's concerns, the Concessionaire may dispute this in accordance with the procedure set out in clause 19 of Schedule 2.

23.8 Where the Concessionaire is required under clause 23.5 to allow Co-Siting on the Easement Land, the Concessionaire is, subject to clause 23.10 entitled to enter into commercial agreements with third parties for them to conduct an activity on the Easement Land and to receive a reasonable fee from them for any agreed activity they intend to carry out on the Easement Land. If a dispute arises between the Concessionaire and a third party such dispute must be determined by the Grantor having regard to, but not limited to, the following matters:

- (a) any written comments or submissions of the Concessionaire and third party;
- (b) market value for the concession activity proposed by the third party having regard to the matters specified in Section 17Y(2) of the Conservation Act 1987;
- (c) any other matters the Grantor considers relevant.

23.9 If the Concessionaire does not accept the Grantor's determination, the Concessionaire may dispute this in accordance with the procedure set out in clause 19 of Schedule 2.

23.10 For the avoidance of doubt, a Co-Sitee permitted on the Easement Land must enter into a separate concession with the Grantor in terms of which the Co-Sitee may be required to pay to the Grantor a concession fee and environmental premium assessed in respect of the Co-Sitee's activity on the Easement Land. This separate concession must not contain provisions that conflict with the Concessionaire's rights and obligations in relation to the Easement Land.

23.11 The Grantor must not authorise the third party to commence work on the Easement Land until all relevant resource consents are issued, an agreement is executed between the Concessionaire and third party, and any conditions imposed by the Concessionaire have been met.

24. **Are there any Special Conditions?**

24.1 Special conditions are specified in Schedule 3. If there is a conflict between

this Schedule 2 and the Special Conditions in Schedule 3, the Special Conditions shall prevail.

25. The Law

25.1 This Concession is to be governed by, and interpreted in accordance with the laws of New Zealand.

SCHEDULE 3

SPECIAL CONDITIONS

Include clauses describing the activity e.g. place a weir (as described below) on X river to enable the diversion of water; a right of way whereby stock may pass through the Easement Land on the following conditions.

Some typical special clauses you may wish to include

Right of renewal

1. The Grantor at the Concessionaire's cost must renew the Term for a further period of xyz years provided the Concessionaire:
 - (a) gives the Grantor at least three months' written notice before the end of the Term, which notice is to be irrevocable, of the Concessionaire's intention to renew this Concession; and
 - (b) at the time notice is given in accordance with this clause the Concessionaire is not in breach of this Concession.
2. The renewal is to be on the same terms and conditions expressed or implied in this Concession except that the Term of this Concession plus all further renewal terms is to expire on or before the Final Expiry Date.

Some construction conditions:

3. The pipeline must be no greater than 40mm with a maximum carrying capacity of 0.6 litres per second and to supply no more than 13000 litres per day as per approval of xyz.
4. The pipeline intake must be suitably disguised so as to blend in with the surroundings.
5. The trench for the pipeline must be hand dug with a maximum width of 1m.
6. The pipeline must be laid 600mm below the surface of the ground.
7. Any vegetation removal and soil disturbance necessary to install and undertake the activity must be kept to a minimum. No native vegetation is to be disturbed.
8. The surface of the ground must be reinstated in a tidy manner following the installation of the pipeline.
9. No alterations to the pipeline requiring earth disturbance must be undertaken without consent in writing of the Grantor.
10. The Concessionaire must ensure that all machinery, tools and equipment used in undertaking the Concession Activity is steamed cleaned and weed free prior to being taken onto the Easement Land.
11. The Concessionaire must ensure that all gravel and other materials used in undertaking the Concession Activity are from a weed free source.

12. The Concessionaire must not use any mechanised machinery when constructing and maintaining the Easement Land.
13. That, prior to construction, the Concessionaire must:
 - (a) Mark the centre line of the easement with tape on the ground, for the approval of the **xyz** Area Manager and the Concessionaire must use his best endeavours to conform to that approved route. Any deviation or variance from the approved requires the prior written consent from the **xyz** Area Manager. For the avoidance of doubt, at any point the easement width must not exceed a width greater than **abc**. metres.
 - (b) Provide to the **xyz** Area Manager for his approval, a work plan detailing the contractors to be used, commencement dates, timelines, construction methods and standards.
 - (c) Prepare an annual maintenance programme for the approval of the **xyz** Area Manager.
 - (d) The Concessionaire must implement an on-going weed control programme to the satisfaction of the **xyz** Area Manager, to keep the Easement Land free from all introduced weeds, resulting from the Concessionaire's use of the Easement Land.

Additional costs requirements

14. The Concessionaire is to be responsible for:
 - (a) the reasonable cost of and incidental to the Grantor's on site visits or monitoring prior to, during and after construction as required to confirm the Concessionaire's compliance with the conditions contained herein; and
 - (b) the reasonable costs of the Grantor's Quality Conservation Management (QCM) standards/safety inspections of the improvements to the Easement Land Area

Some "constraint" conditions"

15. The Concessionaire must take all reasonable care to avoid any archaeological values on the Easement Land. If any archaeological evidence is uncovered, the Concessionaire must stop all works immediately and notify the **xyz** Area Manager. Works may not recommence until authorised by the **xyz** Area Manager to do so.
16. The Concessionaire must take reasonable and proper care not to damage any property of the Grantor and must promptly repair any such damage;
17. If the Concessionaire opens up the surface of the Easement Land the Concessionaire must immediately upon completion of any works restore the surface of the Easement Land as nearly as possible to its former condition to the satisfaction of the Grantor.
18. Nothing contained or implied in this easement requires the Grantor or the Concessionaire to supply services on or under the Easement Land or entitles the Concessionaire to interfere with the services of any other user of the Easement Land.

19. Nothing contained or implied in this easement enables the Concessionaire whether by subdivision or by any means whatsoever to have the within easement be available to for additional users.

Bond

20. To ensure compliance with this easement the Concessionaire must provide the Grantor with a bond as contained in Schedule **xyz** issued by a surety approved by the Grantor.

[A precedent bond can be found on [DOCDM-105344](#)]

Didymo

21. The Concessionaire must comply and ensure its clients comply with the MAF Biosecurity New Zealand, Check, Clean, Dry cleaning methods to prevent the spread of Didymo (*Didymosphenia geminata*) and other freshwater pests when moving between waterways. MAF Biosecurity New Zealand, Check, Clean, Dry cleaning methods can be found at - <http://www.biosecurity.govt.nz/didymo>. The Concessionaire must regularly check this website and update their precautions accordingly.

SCHEDULE 4

Insert map or plan

SCHEDULE 5

EASEMENT INSTRUMENT TO GRANT EASEMENT

Sections 90A Land Transfer Act 1952

Land registration district

BARCODE

Grantor

.....
.....*Surname must be underlined*

Her Majesty the Queen (acting through the Minister of Conservation)

Concessionaire (Grantee)
Surname must be underlined

Grant of easement

The Grantor, being the registered proprietor of the servient tenement(s) set out in Annexure Schedule 1 Schedule A, **grants to the Grantee** (and, if so stated, in gross) the easement(s) set out in Schedule A, with the rights and powers or provisions set out in Annexure Schedule 2. for the period commencing on and including ***(INSERT DATE)*** and expiring on and including ***(INSERT DATE)***

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Schedule A *Continue in additional Annexure Schedule if required*

Purpose (nature and extent) of easement,	Shown (plan reference)	Servient tenement (Identifier/CT)	Dominant tenement (Identifier/CT <i>or</i> in gross)
<p>Select one or more of the following:</p> <ul style="list-style-type: none"> (i) a right to convey water: (ii) a right to drain water: (iii) a right to drain sewage: (iv) a right of way: (v) a right to convey electricity: (vi) a right to convey telecommunications and computer media: (vii) a right to convey gas. 			

Easements rights and powers (including terms, covenants, and conditions)

The implied rights and powers implied in specific classes of easement are those prescribed by the Land Transfer Regulations 2002 and/or the Fifth Schedule of the Property Law Act 2007 are negated

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Annexure Schedule 1

1. The within easement is subject to the following terms and conditions set out in the Sub Schedules below

1.	Concession Activity <i>(clause 2)</i>	
2.	Term <i>(clause 3)</i>	years commencing on _____
3.	Final Expiry Date <i>(clause 3)</i>	
4.	Concession Fee <i>(clause 4)</i>	\$xxx plus GST
5.	Concession Fee Payment Date <i>(clause 4)</i>	
6.	Penalty Interest Rate <i>(clause 4)</i>	Double the Grantor's bank's highest 90 day bank bill buy rate
7	Insurance <i>(To be obtained by Concessionaire)</i> <i>(clause 11)</i>	<p>A. <u>Types and amounts:</u></p> <p>(i) Public Liability Insurance for:</p> <p>(a) general indemnity for an amount no less than \$_____ and</p> <p>(b) Forest and Rural Fires Act extension for an amount no less than \$_____</p> <p>B. <u>Other Policies and amounts insert as appropriate</u></p> <p><i>Note if insurance is not required use Schedule 1 words</i></p> <p>Insurance amounts subject to review (clause 11)</p>
8	Addresses for Notices <i>(clause 20)</i>	<p>The Grantor's address is:</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>Phone:</p> <p>Fax:</p> <p>Email:</p> <p>NB: Use street address only</p>
		The Concessionaire's address is: _____

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		<hr/> <hr/> <hr/> Phone: Fax: Email: NB: Use street address only					
9.	Special Conditions <i>(clause 24)</i>	See Schedule 3					

Note: The clause references are to the Minister of Conservation's Standard Terms and Conditions set out below in Sub Schedule 2.

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SUB SCHEDULE 2

STANDARD CONDITIONS

1 Interpretation

- 1.1 The Concessionaire is responsible for the acts and omissions of its employees, contractors, agents, clients and invitees (excluding other members of the public accessing the Easement Land). The Concessionaire is liable under this Concession for any breach of the terms of the Concession by its employees, contractors, agents, clients and invitees (excluding other members of the public accessing the Easement Land), as if the breach had been committed by the Concessionaire.
- 1.2 Where this Concession requires the Grantor to exercise a discretion or give any approval or provides for any other actions by the Grantor, then the Grantor must act reasonably and within a reasonable time. When a consent is required under this Concession such consent must not be unreasonably withheld.

2 What is being authorised?

- 2.1 The Concessionaire is only allowed to use the Easement Land for the Concession Activity.
- 2.2 The Concessionaire must not commence the Concession Activity until the Concessionaire has signed the Concession Document and returned one copy of this Document to the Grantor, as if it were a notice to be given under this Concession.

3 How long is the Concession for- the Term?

- 3.1 This Concession commences on the date specified in Item 4 of Schedule 1 and ends on the Final Expiry Date specified in Item 5 of Schedule 1.

4 What are the fees and when are they to be paid?

- 4.1 The Concessionaire must pay to the Grantor in the manner directed by the Grantor the Concession Fee plus GST on the Concession Fee Payment Dates specified in Items 6, and 7 of Schedule 1.
- 4.2 If the Concessionaire fails to make payment within 14 days of the Concession Fee Payment Date then the Concessionaire is to pay interest on the unpaid Concession Fee from the Concession Fee Payment Date until the date of payment at the Penalty Interest Rate specified in Item 8 of Schedule 1.

5 When can the fee be reviewed?

- 5.1 The Grantor is to review the Concession Fee on the Concession Fee Review Dates in the following manner:
- (a) The Grantor must commence the review not earlier than 3 months before a Concession Fee Review Date and no later than 9 months

following the Concession Fee Review Date by giving notice to the Concessionaire.

- (b) Subject to clause 5.1(e) the notice must specify the Concession Fee which the Grantor considers to be the market value for the Concession Activity as at the Concession Fee Review Date having regard to the matters specified in section 17Y(2) of the Conservation Act 1987.
- (c) If, within 28 days of receipt of the Grantor's notice, the Concessionaire gives notice to the Grantor that the Concessionaire disputes the proposed new Concession Fee the new Concession Fee is to be determined in accordance with clause 5.2(a) or (b).
- (d) If the Concessionaire does not give notice to the Grantor under clause 5.1(c) the Concessionaire is to be deemed to have accepted the Concession Fee specified in the Grantor's notice.
- (e) Notwithstanding clause 5.1(b) the new Concession Fee so determined or accepted must not be less than the Concession Fee payable during the year preceding the particular Concession Fee Review Date and is to be the Concession Fee payable by the Concessionaire from the Concession Fee Review Date.
- (f) Until determination of the new Concession Fee, the Concession Fee payable by the Concessionaire from the Concession Fee Review Date is to be the Concession Fee specified in the Grantor's notice. On determination of the new Concession Fee an adjustment is to be made and paid, either by the Grantor or by the Concessionaire, whichever is applicable.

5.2 Immediately the Concessionaire gives notice to the Grantor under clause 5.1(c) the parties are to endeavour to agree on a new Concession Fee. If the parties are unable to reach agreement within 28 days the new Concession Fee is to be determined either:

- (a) By one party giving notice to the other requiring the new Concession Fee to be determined by the Disputes clause (clause 19) or, if the parties agree,
- (b) by registered valuers acting as experts and not as arbitrators as follows:
 - (i) Each party must appoint a valuer and give notice of the appointment to the other party within 14 days of the parties agreeing to determine the new Concession Fee by this means.
 - (ii) If the party receiving a notice does not appoint a valuer within the 14 day period the valuer appointed by the other party is to determine the new Concession Fee and that valuer's determination is to be binding on both parties.
 - (iii) Before commencing their determination the respective valuers must appoint an umpire who need not be a registered valuer.
 - (iv) The valuers are to determine the new Concession Fee which they consider to be the market value for the Concession Activity as at the Concession Fee Review Date having regard to the matters specified in section 17Y (2) of the Conservation Act 1987 but in no case is the new Concession Fee to be less

than the Concession Fee payable during the year preceding the particular Concession Fee Review Date. If they fail to agree the Concession Fee is to be determined by the umpire.

- (v) In determining the Concession Fee the valuers or umpire are to disregard the annual cost to the Concessionaire to maintain or provide access to the Easement Land.
 - (vi) Each party is to be given the opportunity to make written or oral representations or submissions to the valuers or the umpire subject to such reasonable time and other limits as the valuers or the umpire may prescribe.
 - (vii) The valuers or the umpire must have regard to any such representations but are not bound by them.
- (c) The valuers or umpire must give written notice to the parties once they have determined the new Concession Fee. The notice is to be binding on the parties and is to provide how the costs of the determination are to be borne.
- (d) (i) If a Concession Fee Review Date is postponed because of a moratorium imposed by law the Concession Fee Review is to take place at the date the moratorium is lifted or so soon afterwards as is practicable; and
- (ii) the Concession Fee Review is to establish the market value for the Concession Activity as at that date instead of the date fixed under clause 5.1 having regard to the matters specified in section 17Y(2) of the Conservation Act 1987 but in no case is the new Concession Fee to be less than the Concession Fee payable during the year preceding the particular Concession Fee Review Date; and
- (iii) each subsequent Concession Fee Review is to take place in accordance with the procedure fixed in clause 5.1.

6 Are there any other charges?

- 6.1 The Concessionaire must pay all levies rates and other charges, including utility charges payable in respect of the Easement Land or for the services provided to the Easement Land which relate to the Concessionaire's use of the Easement Land or the carrying on of the Concession Activity.
- 6.2 The Grantor is not liable for any cost incurred in re-establishing the supply of any utilities in the event of any of them becoming unavailable for any reason.
- 6.3 Where the Grantor has paid such levies, rates or other charges the Concessionaire must on receipt of an invoice from the Grantor pay such sum to the Grantor within 14 days of receiving the invoice. If payment is not made within the 14 days then the Concessionaire is to pay interest on the unpaid sum from the date payment was due until the date of payment at the Penalty Interest Rate specified in Item 8 of Schedule 1.

7 When can the Concession be assigned?

- 7.1 If in Item 2 of Schedule 1 the easement is expressed as being in gross the Concessionaire must not transfer, sub licence, assign, mortgage or otherwise dispose of the Concessionaire's interest under this Concession or any part of

it (which includes the Concessionaire entering into a contract or any other arrangement whatsoever whereby the Concession Activity would be carried out by a person (called the assignee) other than the Concessionaire) without the prior written consent of the Grantor.

- 7.2 The Grantor may in the Grantor's discretion decline any application for consent under clause 7.1.
- 7.3 Sections 17P, 17S, 17T, 17U, 17W, 17X, 17ZB and 17ZC of the Conservation Act 1987 apply to applications for consent under this clause unless the Grantor, in the Grantor's discretion, decides otherwise.
- 7.4 If the Grantor gives consent under this clause then the Concessionaire remains liable to observe and perform the terms and conditions of this Concession throughout the Term and is to procure from the Assignee a covenant to be bound by the terms and conditions of this Concession.
- 7.5 The Concessionaire must pay the costs reasonably incurred by the Grantor incidental to any application for consent, whether or not such consent is granted.
- 7.6 If the Concessionaire is not a publicly listed company any change in the shareholding of the Concessionaire altering the effective control of the Concessionaire is to be deemed to be an assignment and requires the consent of the Grantor.

8 What are the obligations to protect the environment?

- 8.1 The Concessionaire must not cut down or damage any vegetation; or damage any natural feature or historic resource on the Easement Land; or light any fire on the Easement Land without the prior consent of the Grantor.
- 8.2 The Concessionaire must at its cost keep the easement facility (as defined in the Land Transfer Regulations 2002) now or hereafter upon the Easement Land, in good order, condition and repair and must keep the Easement Land in a clean and tidy condition and must not store hazardous materials on the Easement Land nor store other materials on the Easement Land where they may obstruct the public or create a nuisance.

9 When can structures be erected?

- 9.1 The Concessionaire must not erect, nor place any structures on, under or over the Easement Land without the prior consent of the Grantor.

10 What if the Concessionaire wishes to surrender the Concession?

- 10.1 If the Concessionaire wishes to surrender this Concession during the currency of the Term, then the Grantor may accept that surrender on such conditions as the Grantor considers appropriate.

11 What are the liabilities and who insures?

- 11.1 The Concessionaire agrees to use the Easement Land at the Concessionaire's own risk and releases to the full extent permitted by law the Grantor and the Grantor's employees and agents from all claims and demands of any kind and

from all liability which may arise in respect of any accident, damage or injury occurring to any person or property in or about the Easement Land.

- 11.2 The Concessionaire must indemnify the Grantor against all claims, actions, losses and expenses of any nature which the Grantor may suffer or incur or for which the Grantor may become liable arising from the Concessionaire's performance of the Concession Activity.
- 11.3 This indemnity is to continue after the expiry or termination of this Concession in respect of any acts or omissions occurring or arising before its expiry or termination.
- 11.4 The Concessionaire has no responsibility or liability for costs, loss, or damage of whatsoever nature arising from any act or omission or lack of performance or any negligent or fraudulent act or omission by the Grantor, or any contractor or supplier to the Grantor, or any employee or agent of the Grantor.
- 11.5 Despite anything else in clause 11 the Concessionaire is not liable for any indirect or consequential damage or loss howsoever caused.
- 11.6 The Grantor is not liable and does not accept any responsibility for damage to or interference with the Easement Land , the Concession Activity, or to any structures, equipment or facilities on the Easement Land or any other indirect or consequential damage or loss due to any natural disaster, vandalism, sabotage, fire, or exposure to the elements except where, subject to clause 11.7, such damage or interference is caused by any wilful act or omission of the Grantor, the Grantor's employees, agents or contractors.
- 11.7 Where the Grantor is found to be liable in accordance with clause 11.6, the total extent of the Grantor's liability is limited to \$1,000,000 in respect of the Concessionaire's structures, equipment and facilities.
- 11.8 Despite anything else in clause 11 the Grantor is not liable for any indirect or consequential damage or loss howsoever caused.
- 11.9 Without prejudice to or in any way limiting its liability under this clause 11 the Concessionaire at the Concessionaire's expense must take out and keep current policies for insurance and for the amounts not less than the sums specified in Item 10 of Schedule 1 with a substantial and reputable insurer.
- 11.10 After every three year period of the Term the Grantor may, on giving 10 working day's notice to the Concessionaire, alter the amounts of insurance required under clause 11.9 On receiving such notice the Concessionaire must within 10 working days take out and keep current policies for insurance and for the amounts not less than the sums specified in that notice.
- 11.11 The Concessionaire must provide to the Grantor within 5 working days of the Grantor so requesting:
 - (a) details of any insurance policies required to be obtained under this Concession, including any renewal policies if such renewal occurs during the Term; and/ or;
 - (b) a copy of the current certificate of such policies.

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12 What about Health and Safety?

- 12.1 The Concessionaire must exercise the rights granted by this Concession in a safe and reliable manner and must comply with the Health and Safety in Employment Act 1992 and its regulations and all other provisions or requirements of any competent authority relating to the exercise of this Concession. The Concessionaire must comply with any safety directions of the Grantor.

13 What are the compliance obligations of the Concessionaire?

- 13.1 The Concessionaire must comply where relevant:
- (a) with the provisions of any conservation management strategy or conservation management plan under the Conservation Act 1987 or Part IIA of the Reserves Act 1977, or any general policy statement made under the Conservation Act 1987; Reserves Act 1977, National Parks Act 1980, or Wildlife Act 1953, or management plan under section 45 of the National Parks Act 1980, whichever is appropriate to the Easement Land, together with any amendment or review of any policy, strategy or plan whether approved before, on, or after the date on which this Concession takes effect; and
 - (b) with the Conservation Act 1987, the Reserves Act 1977, the National Parks Act 1980, Wildlife Act 1953 and any other statute, ordinance, regulation, bylaw, or other enactment (collectively the "Legislation") affecting or relating to the Easement Land or affecting or relating to the Concession Activity, including any regulations made under the Conservation Act 1987 and Wildlife Act 1953 or bylaws made under the Reserves Act 1977 or the National Parks Act 1980; and
 - (c) with all notices and requisitions of any competent authority affecting or relating to the Easement Land or affecting or relating to the conduct of the Concession Activity; and
 - (d) with all Department signs and notices placed on or affecting the Easement Land
- 13.2 The Concessionaire must comply with this Concession.
- 13.3 A breach or contravention by the Concessionaire of a relevant conservation management strategy, conservation management plan, management plan or any statement of general policy referred to in clause 13.1.(a) is deemed to be a breach of this Concession.
- 13.4 A breach or contravention by the Concessionaire of any Legislation affecting or relating to the Easement Land or affecting or relating to the Concession Activity is deemed to be a breach of this Concession.

14 When can the Concession be terminated?

- 14.1 If the Concessionaire breaches any of the conditions of this Concession the Grantor may terminate this Concession at any time in respect of the whole or any part of the Easement Land. Before so terminating the Grantor must give the Concessionaire either:
- (a) one calendar month's notice in writing; or

(b) such other time period which in the sole opinion of the Grantor appears reasonable and necessary;

of the Grantor's intention so to terminate this Concession. If this Concession is terminated then the Grantor, at the Grantor's sole discretion, may adjust the Concession Fee payable or refund any Concession Fee paid in advance.

14.2 The Grantor may choose to remedy at any time any default by the Concessionaire under this Concession. Where that occurs, the Concessionaire must pay forthwith on demand all reasonable costs incurred by the Grantor in remedying such default. Before electing to so remedy in accordance with this clause the Grantor must, if practicable, first give the Concessionaire notice of the default and a reasonable opportunity to remedy the default.

15 What happens on termination or expiry of the Concession?

15.1 On expiry or termination of this Concession, either as to all or part of the Easement Land, the Concessionaire is not entitled to compensation for any structures or other improvements placed or carried out by the Concessionaire on the Easement Land.

15.2 The Concessionaire may, with the Grantor's written consent, remove any specified structures and other improvements on the Easement Land. Removal under this clause must occur within the time specified by the Grantor and the Concessionaire is to make good any damage and leave the Easement Land and other public conservation land affected by the removal in a clean and tidy condition.

15.3 The Concessionaire must, if the Grantor gives written notice, remove any specified structures and other improvements on the Easement Land. Removal under this clause must occur within the time specified by the Grantor and the Concessionaire is to make good any damage and leave the Easement Land and other public conservation land affected by the removal in a clean and tidy condition and replant the Easement Land with indigenous vegetation of a similar abundance and diversity as at the commencement of the Term. If before the expiry of the Term the Concessionaire makes an application for a further concession in respect of the same Concession Activity on the Easement Land then the Grantor can not require such removal and reinstatement until such time as that concession application has been determined. If a new concession is granted then removal and reinstatement can not be required until the expiry or termination of the new concession.

16 When is the Grantor's consent required?

16.1 Where the Grantor's consent or approval is expressly required under this Concession then the Concessionaire must seek that approval or consent for each separate time it is required even though the Grantor may have given approval or consent for a like purpose on a prior occasion. Any such consent or approval may be made on such conditions as the Grantor considers appropriate.

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17 Are there limitations on public access and closure?

- 17.1 The Concessionaire acknowledges that the Easement Land is open to the public for access and that the Grantor may close public access during periods of high fire hazard or for reasons of public safety or emergency.

18 What about other concessions?

- 18.1 Nothing expressed or implied in this Concession is to be construed as preventing the Grantor from granting other concessions, whether similar or not, to other persons provided that the Grantor must not grant another concession that would derogate in any material way from the Concessionaire's ability to carry out the Concession Activity.

19 How will disputes be resolved?

- 19.1 If a dispute arises between the parties in connection with this Concession the parties must, without prejudice to any other rights or entitlements they may have, attempt to resolve the dispute by agreement using informal dispute resolution techniques such as negotiation, mediation, independent expert appraisal or any other alternative dispute resolution technique. The rules governing any such technique adopted are to be agreed between the parties.
- 19.2 If the dispute cannot be resolved by agreement within 14 days of written notice by one party to the other (or such further period as the parties may agree to in writing) either party may refer the dispute to the Disputes Tribunal, where relevant, or to arbitration, which arbitration is to be carried out in accordance with the provisions of the Arbitration Act 1996.
- 19.3 If the parties do not agree on an arbitrator within 10 working days of a party giving written notice of the requirement to appoint an arbitrator the President of the New Zealand Law Society is to appoint the arbitrator. In either case the arbitrator must not be a person who has participated in an informal dispute resolution procedure in respect of the dispute.
- 19.4 The arbitrator must include in the arbitration award reasons for the determination.
- 19.5 Despite the existence of a dispute, each party must continue to perform its obligations under this Concession.

20 How are notices sent and when are they received?

- 20.1 Any notice to be given under this Concession is to be in writing and made by personal delivery, fax, by pre paid post or email to the receiving party at the address, fax number or email address specified in Item 11 of Schedule 1. Any such notice is to be deemed to have been received:
- (a) in the case of personal delivery, on the date of delivery;
 - (b) in the case of fax, on the date of dispatch;
 - (c) in the case of post, on the 3rd working day after posting;

(d) in the case of email, on the date receipt of the email is acknowledged by the addressee by return email or otherwise in writing.

20.2 If either party's details specified in Item 11 of Schedule 1 change then the party whose details change must within 5 working days of such change provide the other party with the changed details.

21 What about the payment of costs?

21.1 The Concessionaire must pay the Grantor's legal costs and expenses of and incidental to preparing and signing this Concession or any extension or variation of it.

21.2 The Concessionaire must pay in full immediately and on demand all costs and fees (including solicitor's costs and fees of debt collecting agencies engaged by the Grantor) arising out of and associated with steps taken by the Grantor to enforce or attempt to enforce the Grantor's rights and powers under this Concession including the right to recover outstanding money owed to the Grantor.

22 What about the powers implied by statute?

22.2 The rights and powers implied in the relevant easements by the 5th Schedule to the Property Law Act 2007 and the Fourth Schedule to the Land Transfer Regulations 2002 **DO NOT APPLY** to this Easement. The rights and powers relating to this Easement are set out in the Special Conditions contained in Schedule 3.

23 What about Co-Siting?

23.1 In this clause "Co-Site" means the use of the Concessionaire's structures or facilities on the Easement Land by a third party for an activity; and "Co-Sitee" and "Co-Siting" have corresponding meanings.

23.2 The Concessionaire must not allow Co-Siting on the Easement Land without the prior written consent of the Grantor.

23.3 The Grantor's consent must not be unreasonably withheld but is at the Grantor's sole discretion and subject to such reasonable terms and conditions as the Grantor thinks fit including a requirement that the Co-Sitee be liable for direct payment to the Grantor of a concession fee and any environmental premium assessed in respect of the Co-Sitee's activity on the Easement Land.

23.4 In addition, the Grantor must withhold consent if:

- (a) the Co-Siting would result in a substantial change to the Concession Activity on the Easement Land; or
- (b) the Grantor considers the change to be detrimental to the environment of the Easement Land.

23.5 Subject to clause 23.4 the Concessionaire must, if required by the Grantor, allow Co- Siting on the Easement Land.

23.6 Where the Concessionaire maintains that Co-Siting by a third party on the Easement Land would:

- (a) detrimentally interfere physically or technically with the use by the Concessionaire of the Easement Land; or
- (b) materially prejudice any resource consents obtained by the Concessionaire or cause more onerous conditions to be imposed on it by the relevant authority; or
- (c) obstruct or impair the Concessionaire's ability effectively to operate from the Easement Land; or
- (e) interfere with or prevent future forecast works of the Concessionaire, the Grantor, must, as a pre-condition to consideration of an application to grant a concession to a third party, require that third party to obtain, at its own cost, a report prepared by an independent consultant acceptable to the Grantor confirming or rejecting the presence of the matters specified in this clause 23.6. The Grantor must not grant a concession to a third party where the report confirms that the proposed concession would give rise to one or more of the matters specified in this clause 23.6.

23.7 If the independent consultant report rejects the Concessionaire's concerns, the Concessionaire may dispute this in accordance with the procedure set out in clause 19 of Sub Schedule 2.

23.8 Where the Concessionaire is required under clause 23.5 to allow Co-Siting on the Easement Land, the Concessionaire is, subject to clause 23.10 entitled to enter into commercial agreements with third parties for them to conduct an activity on the Easement Land and to receive a reasonable fee from them for any agreed activity they intend to carry out on the Easement Land. If a dispute arises between the Concessionaire and a third party such dispute must be determined by the Grantor having regard to, but not limited to, the following matters:

- (d) any written comments or submissions of the Concessionaire and third party;
- (e) market value for the concession activity proposed by the third party having regard to the matters specified in Section 17Y(2) of the Conservation Act 1987;
- (f) any other matters the Grantor considers relevant.

23.9 If the Concessionaire does not accept the Grantor's determination, the Concessionaire may dispute this in accordance with the procedure set out in clause 19 of Sub Schedule 2.

23.10 For the avoidance of doubt, a Co-Sitee permitted on the Easement Land must enter into a separate concession with the Grantor in terms of which the Co-Sitee may be required to pay to the Grantor a concession fee and environmental premium assessed in respect of the Co-Sitee's activity on the Easement Land. This separate concession must not contain provisions that conflict with the Concessionaire's rights and obligations in relation to the Easement Land.

23.11 The Grantor must not authorise the third party to commence work on the Easement Land until all relevant resource consents are issued, an agreement is executed between the Concessionaire and third party, and any conditions imposed by the Concessionaire have been met.

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24 Are there any Special Conditions?

24.1 Special conditions are specified in Schedule 3. If there is a conflict between this Sub Schedule 2 and the Special Conditions in Schedule 3, the Special Conditions shall prevail.

25 The Law

25.1 This Concession is to be governed by, and interpreted in accordance with the laws of New Zealand.

Dated

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SUB SCHEDULE 3

SPECIAL CONDITIONS

(Insert any special conditions)